Supreme Court, U.S.
FILED

961945 JUN 4 1997

OFFICE OF THE CLERK

NO _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1996-1997

ROBERT W MUSSER,

Petitioner
vs.

DOUG DAMROW; ROBERT MULLIN; JEROME H MILLER;
ROBERT P RITTEREIER; EDWARD GIOIELLA;
SHEARSON LEHMAN HUTTON, INC.,

Respondents.

On Petition For Writ of Certiorari
To The United States Court of Appeals
For the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Robert W Musser
Petitioner
12740 Ginami St.
Anchorage, AK 99516

38 pp

ISSUES PRESENTED FOR REVIEW

1. The lack of jurisdiction of the Federal Court.

2. The dismissal of the underlying action by the District Court while the District Court's Order was in the Appeal process.

3. An Order to Arbitration by the District Court that does not comply with the Arbitration Act of 1925,9 USC 2. The underlying agreement to arbitrate does not follow the "Law of Contracts" and is only "permissive" and not "mandatory" by Ninth Circuit case law. The language here is in opposition to Supreme Court rulings.

4. The denial to hear an Appeal of the Order to Arbitrate by the Ninth Circuit in opposition to the standards of the Second,

Forth, and Seventh Circuits. There needs to be a uniform standard between Circuits in the application of 9 USC 16.

5. The lack of a Judicial standard by this Court for the Judiciary in administering their oath of office "to administer justice to the rich and poor alike".

6. The appearance of criminal conduct in the Judicial Branch.

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I.

JURISDICTION

The decision of the District Court was affirmed on March 6, 1997. This Petition for Writ of Certiorari is filed within 90 days of that date as provided for under 28 USC 2101(c) and Rule 13(1) of the Rules of the United States Supreme Court. This Court's jurisdiction is invoked under 28 USC 1254(1)

II.

JURISDICTION OF THE DISTRICT COURT

The jurisdiction of the District Cour of Alaska was based on diversity of citizenship, removed from State Court by the respondents.

III.

REASONS FOR GRANTING WRIT

1. The Ninth Circuit denying jurisdiction under 9 U.S.C. 16 is in direct

opposition to the Second, Forth, and Seventh Circuits. This court should provide "equal due process" and uniformity to all US citizens.

2. The Ninth Circuit's forum clause ruling as "permissive" and not "mandatory" is directly against this courts enforcement of forum clauses of the same language.

3. Abuse of jurisdiction should be raised and corrected by all courts.

4. This court, the head of the Judicial Branch, should set a standard for the judiciary in administering justice to the "rich and poor" alike. Their oath of office.

IV.

STATEMENT OF THE CASE

The Petitioner filed a State labor law complaint against the respondents in Alaska State Court. This complaint was filed for

the knowing, repeated, willful theft of wages for the direct benefit of the respondents. The respondents removed the action to Federal District Court on the basis of diversity jurisdiction.

A Motion to Remand was filed, with oral arguments, stating this was a State labor law complaint filed under Alaska's labor laws and that a State licensing agreement, BD Form, was signed by some of the nonresident defendants to be sued as if residents of the State. This was denied. An Order to Arbitrate was issued. To invoke the arbitration order, the respondents produced arbitration clauses that are statutory requirements of stock securities personnel. This was appealed. The Ninth Circuit denied the Appeal stating a lack of jurisdiction under 9 USC 15 (now 9 USC 16).

A new District judge was assigned to this action. A Civil Rule 60(b) motion was heard by this new judge that the language used in the arbitration clause was not enforceable. This Motion was denied and appealed. The Ninth Circuit again denied having jurisdiction over the appeal again stating 9 USC 16 even though the Second, Forth, and Seventh Circuits had new cases in opposition to the Ninth's ruling. The denial of the Appeal was put up for Rehearing and an Enbanc review because of the different handling between circuits, it was denied. The U S Supreme Court clerk accepted a Petition for Writ of Certiorari on this Ninth Circuit ruling as timely but returned it four or five times for form and content. After approximately ten months of serious effort and expense, it was turned down as untimely.

During this period the new District Judge was requiring status reports of the case. The respondents' counsel advised the Court that it may not have jurisdiction while an appeal was in progress. The respondents changed counsel and the District Judge dismissed the underlying action while the US Supreme Court clerk was still considering the timeliness of the Petition before the Court.

1. THE FEDERAL DISTRICT COURT DOES NOT HAVE JURISDICTION

Their are two issues denying Federal jurisdiction. Do the State's long arm contract clauses apply as enforced by the same District Judge and the Ninth Circuit in a similar cases. Does the nation wide BD Form contract, a State licensing agreement for securities business for nonresidents,

and submit the nonresidents to the authority of the State.

A. ALASKA'S LONG ARM STATUTES PROVIDE FOR STATE JURISDICTION OVER FEDERAL JURISDICTION UNDER DIVERSITY OF CITIZENSHIP.

The Ninth Circuit demonstrates some confusion in the issues in the Appeal and ignores its own case law. The Ninth's Circuits judgment refers to subject matter jurisdiction opposed to the issue of personal jurisdiction, the basis of "diversity jurisdiction", the basis of the underlying jurisdiction of the District Court.

This action was filed in State Court under the State labor laws and the State's long arm statutes applies to the jurisdiction of the nonresident respondents. The State Courts of Alaska have jurisdiction over this action and it should have been remanded to State Court.

In Data Disc Inc. v. Systems Technology Associates, Inc., 557 F2d 1280 (9th Cir 1977) the Ninth Circuit outlines the tests for State jurisdiction over nonresidents. The Circuit starts with a lineage from International Shoe v. Washington, 326 U.S. 310,(1945). In a recent published opinion Munoz v. Albuquerque A.R.T., 829 F. Supp 309, (Alaska, 1993), the District Court that dismissed this action while in Appeal invoked Alaska's Long Arm jurisdiction. The underlying action meets all of the requirements in Data Disc and clearly exceeds the issues in Munoz v. Albuquerque A.R.T..

The Ninth Circuit, in Data Disc,(p1286):

> "The power of a federal court entertaining a case based on diversity of citizenship to exercise personal jurisdiction over a nonresident defendant turns on two independent considerations: whether an applicable state rule or statute potentially confers personal jurisdiction over the defendant, and whether assertion

of such jurisdiction accords within constitutional principals of due process." "The basic rule is that the defendant must have certain minimal contacts with the forum such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." International Shoe v. Washington, 326 U.S.316.

"A State has a special interest in exercising jurisdiction over those who have committed tortious acts within the state. By subjecting the tort feasor to liability for damages which are the proximate result of the tort, the state acts to deter wrongful conduct which affects those within the State."

In Munoz v. Albequerque A.R.T., 829 F.Supp 309 (Alaska 1993), the lower court involved in this case, Judge Sedwick states:

"From this court's perspective, the plaintiff's choice of forum is an important factor. Failure to assign this considerable significance risks inviting litigation over where the parties will litigate as a sort of routine prelude to every diversity lawsuit's main theme." "Alaska law extends personal jurisdiction to fullest extent permitted by the Constitution, which reduces inquiry her to ascertaining whether exercising jurisdiction over defendants is consistent with due process."

THIS IS THE DIRECT OPPOSITE OPINION USED IN THE UNDERLYING CASE BY THE SAME COURT.

The defendents/respondents in this action have maintained a securities office in Alaska, with approximately 20 employees, continually since 1980. They hire local Alaskans, maintain local counsel, and the claim against them evolves tortuous acts (knowing willful theft of wages for their personal benefit from employees) and as stated in the Appeal falls under Alaska's Long Arm statutes as stated in A.S. 09.05.

The Ninth Circuit simply ignored the issue of State jurisdiction based on the long arm statutes in their Judgment. Their is a consistent procedure in the Alaska's District Courts and the Ninth Circuit - The Court does research for and provides case law for the attorney and ignores case law and statutes passed by Congress presented by a

citizen. The record is consistent and very clear on this point.

The District Court does not have jurisdiction of this case and the Ninth Circuit should have ordered a remand.

B. NATIONWIDE NONRESIDENT STATE LICENSING AGREEMENT (BD FORM) WITH THE SAME LANGUAGE AS THE ARBITRATION CLAUSE, SAME LANGUAGE ENFORCED BY THIS COURT - ARBITRATION CLAUSE ENFORCED AGAINST PETITIONER, NONRESIDENT LICENSING AGREEMENT DECLINED FOR THE BENEFIT OF THE RESPONDENTS

The Ninth Circuit ruled that the uniform nation wide BD Form, used by the Securities Industry for nonresidents to comply with State laws and to be sued in State court as a resident of the State, is not a forum selection clause. "But if it is, it does not defeat federal subject matter jurisdiction", then cites a securities litigation. As stated by the plaintiff/appellant/petitioner, 15 USC 77 and 15 USC 78 provide for

concurrent jurisdiction with the States.

The Circuit goes on to state "even if the provision if construed as a forum selection clause, it is permissive and does not require Musser's action to be litigated in an Alaska's state court. This decision goes directly against the long lineage of cases by the Supreme Court over the language used designating the forum selection clauses for arbitration in the New York Stock Exchange (NYSE) and the National Association of Securities Dealers (NASD) membership agreements. This gives the defendants the choice of forum opposed to consistent case law giving the plaintiff the choice of forum.

Again, the Circuit provided case law for the attorney and ignored the issue that it did not apply their new "permissive", "exclusionary", and "mandatory" forum

arbitration order they enforced. The defendant/respondants never have had to state that they did not believe they where contracting as nonresidents that to do business in the State of Alaska that they were not submitting themselves to the authority of the State. The District Court Judge did this for them. The respondents counsel now just follows the unrequested ruling of the Court. The BD Form is the standard in the industry and the District Court and the Ninth Circuit show there lack of credibility. This conduct is abusive and consistent in all proceedings.

For consistency and credibility, either both of these similar forum clauses should be enforced or invalid. Currently, both ruling are to the preference of the respondents, in

Circuit's standards, both are invalid.

2. THE DISMISSAL OF THE UNDERLYING ACTION BY THE DISTRICT COURT WHILE THE DISTRICT COURT'S ORDER WAS IN THE APPEAL PROCESS

District Court Judge Sedwick replaced Judge Kleinfeld in the underlying action. The petitioner filed a Civil Rule 60(b) motion with the court after Judge Kleinfeld had ordered arbitration. This motion was heard, denied, and appealed. While Judge Sedwick's order was being appealed, Judge Sedwick continually ordered the petitioner to report to him. The defendants counsel, later removed, advised the court that it probably did not have jurisdiction while case was in appeal. Judge Sedwick dismissed the underlying action while the Supreme Court was still considering the timeliness of a Petition. The appeal of Judge Sedwick was

not frivolous or delaying, and it was done at considerable effort and expense. The basis of that appeal is presented in the Forth Issue For Review.

The District Court and the Ninth Circuit have denied a citizen a very, very basic right of due process. There is considerable misrepresentation by the three judge panel in their Memorandum about the facts as to whether or not the NASD and the Supreme Court were involved at the time of the dismissal. The record will prove this out if required. The issue here is does a citizen have the right to appeal Judge Sedwick's order without retaliation by the court. As a citizen I am disappointed that this is condoned by a circuit court. This is an abuse of the public trust and is a crime against our form of government.

3. THE ORDER TO ARBITRATION DOES NOT COMPLY WITH 9 USC 2 AND IS PERMISSIVE AND NOT MANDATORY BY THE NINTH CIRCUIT'S CASE LAW

The Securities Exchange Act of 1934, 15 USC 78o,o-3, by statute requires membership in the New York Stock Exchange and the National Association of Securities Dealers. A statute requiring membership, a membership requiring arbitration, does not follow the "law of contracts" required by 9 USC 2 for the enforcement of arbitration. The Ninth Circuit ruled, at the request of the respondent's counsel, that this issue was resolved in Gilmer v Interstate. This issue was not presented in Gilmer - only unequal bargaining power in a contact was stated by the Circuit. There is no bargaining with an act of Congress and the Courts don't have the statutory authority to enforce arbitration against the statutory restriction in 9 USC 2.

If there is any bargaining, as in the law of contracts, per 9 USC 2, where is one individual who has negotiated a different membership agreement that has been required by the Congress to sign.

The court in doing the case law work for the respondents' counsel, the Circuit states in their judgment that "enforcement of a forum selection clause can be mandatory (opposed to permissive-choice of forum to the defendant) if it clearly designates a particular forum as exclusive. Northern California Dist. Council of Laborers v. Pittsburg-Des Moines Steel Co., 69 F3d 1034, (9th Cir 1995).

The forum selection clauses, in the NYSE and the NASD required membership agreements, are not exclusive and the enforcement by the Ninth circuit is in contradiction to their

own case law. In this case, in their Judgment, they rule differently from page to page. The language used in the above cited case goes against the language in the forum selection clause enforced by this Court in Gilmer v Interstate, 500 U.S. 20, (1991).

As stated 1.B. above, either both the forum selections clauses (state licensing and securities membership) should be enforced or both rejected. If the circuit court spends the time to do case work to support the respondents, it would at a minimum, to at least apply the same standard of law for a citizen.

4. THE DENIAL TO HEAR AN APPEAL CITING 9 USC 16. THIS IS A NON STANDARD RULING BETWEEN CIRCUITS WITH THE SECOND, FORTH, AND SEVENTH PROVIDING A DIFFERENT DUE PROCESS FOR THE CITIZENS IN THEIR JURISDICTION.

Part of the delay in bringing the criminal conduct of the respondents to the

bar of justice is the denial of the Ninth Circuit to hear an appeal of an order to arbitration and/or the issue of jurisdiction. This court has ruled jurisdiction can be raised at any time, even with the first time being in the appeal. The Ninth Circuit denied all appeals citing 9 USC 16.

In the Forth Circuit, Stedor v Armtex, 947 F2d 727,(1991): "There is, however an exception to the non-appealability of orders favoring arbitration: section 16(a)(3) permits appeal from a final decision with respect of an arbitration". FURTHER, in supporting the appeals court's jurisdiction, the 4th Circuit quoted the 134th Congress Rec Sq6,309(daily ed. Oct 14, 1988): The Senate Judiciary Committee explained as follows:

> Under the proposed statute, appeal ability does not tun solely on the policy favoring arbitration. Appeal can be taken from final judgments, including a

final judgment in an action to compel arbitration, ... etc. These appeals preserve the general policy that appeal should be available where there is nothing left to be done in the district court. (emphasis added)

Related cases: Chug v President, 943 F2d 225, (2nd Cir 1991)
SLH v Miller-ST, 988 F2d 1518, (7th Cir 1993)

5. THE LACK OF A JUDICIAL STANDARD BY THIS COURT FOR THE JUDICIARY IN ADMINISTERING THEIR OATH OF OFFICE "TO ADMINISTER JUSTICE TO THE RICH AND POOR ALIKE"

I, Robert Warren Musser, the respondent, have been a nuclear warhead courier and custodian for the United States and Canadian Governments. I am familiar with politically appointed officials that abuse the public's trust and commit crimes our against society. I have not meet a legal professional who defends the conduct of the Judicial Branch in this petition.

A related case to me, 9th Circuit No 94-36103, a tax refund case. The Internal

Revenue Service gave me an incorrect statute of limitations for a $29,000 overpayment of taxes. A refund claim was filed within the time frame stated. The refund was refused for being out of time - this is a conversion of my assets based on the governments error.

As a non-attorney, and unable to hire counsel short of selling my house for funds, I filed a tax refund suit against the United States for the return of my assets. The Government obtain an unjust ruling at their request from the head District Judge in Alaska, Judge Holland. On appeal to the Ninth Circuit, the government, after my opening brief, agreed with me that Judge Holland was wrong in his ruling and proved why. Then the government changed its argument with the Circuit and got the Circuit to dismiss the action on grounds not in the

Appeal. In my reply brief, I presented the controlling statute passed by Congress stating the statute of limitations for refund - not the convoluted opinion of Judge Kleinfeld. The Judge who I had already filed a complaint with the Federal Bureau of Investigation for the Judge having authority over the appearance of an altered transcript.

The Ninth Circuit in its standard procedure, ignored the statute passed by Congress, and acting as a court in original jurisdiction - dismissed the case. This procedure does not allow an appeal of their ruling.

I then filed a Civil Rule 60(b) motion with Judge Holland due to the Circuits error in "due process". He denied it - then under Civil Rule 59 reversed his decision and heard the motion to dismiss the case. He stated

their was nothing new - only the controlling Statute that he would not rule on against the government. Same procedure as in this proceeding. This ruling was appealed to the Ninth Circuit - the Ninth Circuit ignored the statute - dismissed the case in favor of the government.

In the private sector, if a citizen takes someone else's assets without their permission or the law, they are considered criminal. I don't believe that these are bad decisions by these judges, I believe they are abusing public trust and committing a crime against our society and our form of Government.

I requested a standard of conduct from the Ninth Circuit's Judicial Council for discrimination against citizens by the judiciary. I also filed a complaint against

Judge Kleinfeld for trying to use his judgeship to influence the political process of appointing an Alaska Supreme Court Judge. The newspaper took exception to his conduct since he presides over Alaska's cases.

Besides the certified return from the clerk of the Court - the Judicial Council did not bother to comply with a request from a citizen - a non attorney. A standard attitude. Jan 3, 1997

To be blunt and with all due respect - assuming we are all mature citizens here. This abuse would not be going on if it was not condoned by this Court. The oath of office for these government officials is clearly being violated. This Court has demonstrated the authority to order busing of millions of children against their will. It is the head of a self regulated branch of the

government, clearly has the authority to ensure the administration of justice - but it chooses to only selectively correct injustices. This, in a backward sort of way condones abuse, injustice and discrimination. These courts are well aware of what this court will hear and over turn. I believe the citizens of the United States deserve better and expect justice. Not justice based on who you know or which law firm you can afford.

THE QUESTION IS SIMPLE ENOUGH, IS THE CONDUCT OUTLINED IN THIS BRIEF THE STANDARD OF THIS COUNTRY, OF THIS COURT, THE SUPREME COURT OF THE UNITED STATES?

6. THE APPEARANCE OF CRIMINAL CONDUCT IN THE JUDICIARY

In appealing Judge Kleinfeld's oral arguments, I realized that the official tape of court proceeding was incomplete. I filed an affidavit to that effect. I took the tape to a recording studio and the technician

stated it had been electronically altered. This was reported to the FBI. On the second visit to the FBI, after stating they did not keep a record of the first, they took my father, a W.W.II veteran, into the back room and told him they had trouble with these judges too.

I feel confident that Judge Kleinfeld had heard of this issue, but did not excuse himself from ruling on my tax refund suit. I feel confident that this had a bearing on Judge Sedwick dismissing my case while in appeal. These issues were presented to the Ninth circuit with no response. They were presented in the tax case in an En Banc suggestion and in this appeal in the Petition for Rehearing.

I understand that altering federal evidence is a felony. Does this court

condone these concerns. If it does not condone them - what procedure does this court have for a citizen of the United States to address these issues?

SUMMARY

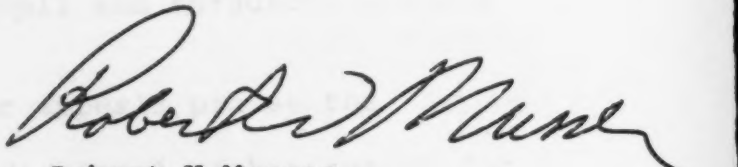
There are considerable claims of abuse in this Petition. I believe that most Judges and attorneys are honest and have a very difficult job. Litigation is clearly, very technical and expensive. The issue of abuse primarily involves the question of what happens when their is a problem, here I believe a systemic problem, an understood protection of the judiciary - by the judiciary and an understood dislike of non-attorneys. What is the standard of conduct, who enforces it? What happens to justice?

I believe the issues of abuse presented

here demean this court and all people in authority in this country. It creates mistrust, and with some dysfunctional citizens justifies an Oklahoma city bombing.

I respectively request a fair hearing of these issues, the underlying case reinstated and remanded to State court so that I can bring these tort-feasors to justice.

RESPECTIVELY SUBMITTED this 4th day of June, 1997.



Robert W Musser
Petitioner

12740 Ginami St.
Anchorage, AK 99516

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT W MUSSER Plaintiff-Appellant,	)
v.	)
DOUG DAMROW; et al.	) C. A. 96-35193) D. C. 89-0504CV
Defendants-Appellees.	) MEMORANDUM

Appeal from the United states District Court for the District of Alaska
John W Sedwick, District Judge, Presiding
Submitted November 19, 1996

Before: Choy, Skopil and Ferguson, Circuit Judges

Robert Musser appeals pro se the district court's dismissal of his action for lack of prosecution. Musser contends that the district court 1) lacked subject matter jurisdiction; 20 should not have directed arbitration; and 3) erred in dismissing his action. **We affirm.**

FILED
Dec 17, 1996
Cathy Catterson
US Court of Appeal

1. Jurisdiction

Musser does not dispute that the requirements for diversity jurisdiction were satisfied. Rather, he asserts that a "forum clause" in the Broker- Dealer Registration form filed by Shearson Lehman Hutton in Alaska defeats federal jurisdiction and requires that his action be litigated in state court. We disagree. The provision upon which Musser relies simply ensures the registrant's amenability to service of process rather than mandating a particular forum. Moreover, even if it is a forum selection clause, it does not defeat federal subject matter jurisdiction. See Pelleport Investors, Inc. v. Budco Quality Theatres, Inc., 741 F2d 273, 278 (9th Cir. 1984) (existence of subject matter jurisdiction is a condition precedent to district court's

ability to enforce a forum selection clause).

In some instances, however, enforcement of a forum selection clause can be mandatory if it clearly designates a particular forum as exclusive. Northern California Dist. Council of Laborers v. Pittsburg-Des Moines Steel Co. 69F3d 1034, 1037 (9th Cir 1995). The state registration form contains no such language. Rather, It provides for suit "in any court of competent jurisdiction and proper venue within said state." The federal court is surely a court of competent jurisdiction within the State of Alaska. We therefore conclude that, even if the provision is construed as a forum selection clause, it is permissive and does not require Musser's action to be litigated in an Alaska state court.

2. Arbitration

To receive a license to sell securities, Musser was required to complete and file a Uniform application for Securities Industry Registration and Transfer (Form U-4). The Form U-4 contains an arbitration clause. Such written agreements to arbitrate disputes are "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 USC 2.

Musser contends that the arbitration clause is revocable because it is part of a membership agreement which he had no choice but to sign if he wanted to b a securities broker. We have previously rejected the contention that form U-4 is and unconscionable adhesion contract simply because all securities brokers are required

to execute them. See Cohen v. Wedbush,Noble, Cooke, Inc., 841 F2d 282,285 (9th Cir 1988). Further, even assuming Musser's bargaining position was not strong, "{m}ere inequality in bargaining power . . . is not a sufficient reason to hold that arbitration agreements are never enforceable in the employment context." Gilmer v. Interstate/Johnson Lane Corp.,500 US 20, 33 (1991). Consistent with the "liberal federal policy favoring arbitration agreements," id. at 25, we conclude that the district court did not err in ordering arbitration.

3. Dismissal

Musser contends that the district court erred in dismissing his action for failure to prosecute because either arbitration was proceeding or a petition for certiorari of the arbitration order was pending. The

record reveals, however, that no petition was pending before the Supreme court and the arbitration proceedings were in fact closed at the time the district court dismissed the case.

A district court may dismiss for lack of prosecution after considering 1) the public's interest in expeditious resolution of litigation; 2) the need to manage its docket: 3) the risk of prejudice to defendants; 40 the public policy favoring disposition of cases on their merits and 5) the availability of less drastic sanctions. AL-Torki v. Kaempen, 78 F3d 1381, 1384 (9th Cir a996). There must also be a showing of unreasonable delay. Id. Here, five years passed between the original arbitration order and the date of dismissal, and Musser has failed to justify sufficiently this delay. Moreover,

that dismissal would result if he failed to demonstrate that his action was either pending before the Supreme Court or proceeding to arbitration. "(A) district court's warning to a a party that his failure to obey the court's order will result in dismissal can satisfy the consideration of alternative {sanctions} requirement." Ferdik v. Bonzelet, 563 F2d 1258, 1262 (9th Cir.), cert. denied, 506 US 91`5 (1992).

In light of the foregoing, we do not have "a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon a weighing of the relevant factors." Morris v Morgan Stanley & Co., 942 F2d 648,652 (9th Cir 1991)

AFFIRMED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Filed
Mar 6, 1997
Cathy A Catterson
U .S. Court Of Appeal

ROBERT W MUSSER Plaintiff-Appellant,	)	
v.	)	C. A. 96-35193
DOUG DAMROW; et al.	)	D. C. 89-0504CV
Defendants-Appellees.	)	JUDGMENT

APPEAL FROM the United States District Court of the Alaska (Anchorage).

THE CAUSE came on to be heard on the Transcript of the Record from the United States District court for the District of Alaska (Anchorage) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby AFFIRMED.

BEST AVAILABLE C

9 USCS 16. Appeals

(a) An appeal may be taken from-

(1) an order-

(A) refusing a stay to any action under section 3 of this title,

(B) denying a petition under section 4 of the title to order arbitration to proceed,

(C) denying an application under section 206 of this title to compel arbitration,

(D) confirming or denying confirmation of an award or partial award, or

(E) modifying, correction, or vacating an award

(2) an interlocutory order granting, continuing, or modifying an injunction against an arbitration that is subject to this title, or

(3) a final decision with respect to an arbitration that is subject to this title.

COPY

BD FORM
Page 1

UNIFORM APPLICATION FOR BROKER DEALER REGISTRATION

Applicant: Shearson Lehman Hutton Inc.

Execution: For the purpose of complying with the laws of the State(s) I have designed in item 2 relating to either the offer or sale of securities or commodities, I hereby certify that the applicant is in compliance with applicable state surety bonding requirements and irrevocably appoint the administrator of each of those State(s) upon whom may be served any notice process or pleading in any action or proceeding against me arising out of or in connection with the offer or sale of securities or commodities, or out of the violation or alleged violation of the laws of those State(s) and I do hereby consent that any such action or proceeding against me my be **commenced in any court** of competent jurisdiction and proper venue within said State(s) by service of process upon said appointee with the same effect **as if I were a resident in said State(s)** and had lawfully been served with process in said State(s). (emphasis added)

Signed Caroline Baumel, First VP
Shearson Lehman Hutton